

Deposition of:
Osbaldo Jose-Nicolas

Date: May 26, 2017

Case: Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

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Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.
Osbaldo Jose-Nicolas 5/26/2017

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

OSBALDO JOSE-NICOLAS, #R-72183

vs.

NATHAN BERRY, et al

Cause No. 15-964-NJR-DGW

DEPOSITION OF OSBALDO JOSE-NICOLAS

TAKEN ON BEHALF OF THE DEFENDANTS

May 26, 2017

REPORTER: SARAH MECKLENBURG, CSR 084.004858

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1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF ILLINOIS
3 EAST ST. LOUIS DIVISION

4 OSBALDO JOSE-NICOLAS,)
#R-72183,)
5 PLAINTIFF,)
6 vs.) Case No. 15-964-NJR-DGW
7 NATHAN BERRY, et al,)
8 DEFENDANTS.)
9)

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21

22 Also present: THE INTERPRETER
23
24

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1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for the PLAINTIFF and counsel for the
3 DEFENDANTS that this deposition may be taken in
4 shorthand by Sarah Mecklenburg, a Certified Shorthand
5 Reporter, and afterwards transcribed into typewriting;
6 and the signature of the witness is expressly WAIVED.

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1 MEIBY HUDDLESTON,

2 having been first duly sworn testified as follows:

3 OSBALDO JOSE-NICOLAS,

4 having been first duly sworn testified as follows:

5 EXAMINATION BY MS. JENNINGS:

6 Q. Can you state your name for us?

7 A. Osbaldo Jose-Nicolas.

8 Q. We are currently at Menard Correctional
9 Center, right?

10 A. Yes.

11 Q. You understand that you're under oath?

12 A. Yes.

13 Q. And that means that you have to tell the
14 truth today?

15 A. Yes.

16 Q. Have you ever had a deposition taken
17 before?

18 A. No.

19 Q. Well, a deposition is a time for me to ask
20 you questions about your case, and then you respond to
21 my questions to the best of your ability.

22 If I ask you a question and you don't
23 understand it, let me know, and I can rephrase it.

24 A. Okay.

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1 Q. You can interrupt me and go back and add to
2 a previous answer. You can ask me to repeat. As long
3 as you answer, I'm going to assume that you understood
4 the question. Is that fair?

5 A. Okay.

6 Q. Now, for the court reporter to take
7 everything down that we're all saying, it's important
8 that you answer out loud so that our translator can
9 hear you and understand you. Okay?

10 A. Yes, that's fine.

11 Q. It's going to be very important today that
12 we try not to talk over each other. Okay?

13 A. Okay.

14 Q. Do you have any general questions about how
15 a deposition works?

16 A. Do I have a question? No.

17 Q. If your attorney objects to a question,
18 just wait to answer until she instructs you either to
19 answer or not to answer.

20 A. Okay.

21 Q. If you need a break at any point, let me
22 know. Okay?

23 A. That's fine.

24 Q. Are you on any medications today that would

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1 **impact your ability to understand my questions or**
2 **answer them truthfully?**

3 A. I'm taking medicine, but I don't believe
4 that that will be any problem at all.

5 Q. Do you have any other issues going on that
6 would prevent you from understanding my questions or
7 answering them truthfully?

8 A. No.

9 Q. Is there any other reason why you feel like
10 you couldn't give truthful and accurate testimony
11 today?

12 A. No.

13 Q. Obviously, we have a translator here for
14 you. How fluent are you in English?

15 A. Not much.

16 Q. Okay. How many lawsuits have you filed as
17 a plaintiff?

18 A. I don't believe I understood that question.

19 Q. Other than the lawsuit that we're here for
20 today, how many other lawsuits have you filed?

21 A. Two more.

22 Q. Okay. Are those federal civil rights
23 lawsuits like this one?

24 A. Yes.

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1 Q. Do you know the names or the case numbers?

2 A. No.

3 Q. Is one of those other two the one that was
4 initially connected with this case?

5 A. I believe so.

6 Q. Do you know what the other two are about?

7 A. Yes.

8 Q. And what -- just generally, what are those
9 about?

10 A. Condition of confinement, and the other one
11 is about medical treatment.

12 Q. Okay. Do you have attorneys in those other
13 cases?

14 A. Yes.

15 Q. In both of them?

16 A. Yes.

17 Q. Are you a U.S. citizen?

18 A. No.

19 MS. GOODWIN: Objection to relevance.

20 Q. (By Ms. Jennings) What country are you a
21 citizen of?

22 MS. GOODWIN: Same objection.

23 MS. JENNINGS: Do you want him to answer?

24 MS. GOODWIN: Oh, you can answer. Unless I

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1 instruct you otherwise, you can go ahead and answer
2 the question.

3 THE INTERPRETER: The United States from
4 Mexico.

5 Q. (By Ms. Jennings) What's the highest level
6 of education that you've completed?

7 A. Ninth.

8 Q. Do you have any special licenses or
9 degrees?

10 A. No.

11 Q. Do you have any medical training?

12 A. No.

13 Q. You've been at Menard since 2008; is that
14 correct?

15 A. Yes.

16 Q. Do you have a job here at Menard?

17 A. No.

18 Q. Have you ever had a job here at Menard?

19 A. No.

20 Q. Prior to your incarceration, have you had a
21 job?

22 A. Yes.

23 Q. Just what kinds of jobs, generally, have
24 you had?

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1 A. I don't know.

2 Q. I mean, have you worked in, you know, fast
3 food or construction?

4 A. I used to work at a factory.

5 Q. Anything else you can think of?

6 A. No.

7 Q. You were first incarcerated in the
8 Department of Corrections in 2008; is that correct?

9 A. Yes.

10 Q. Your crimes, first would be murder,
11 correct?

12 A. Yes.

13 Q. And you have a 40-year sentence for that?

14 A. Yes.

15 Q. And then you also have a conviction for
16 concealing a homicidal death, correct?

17 THE INTERPRETER: Can you repeat that
18 question for the interpreter?

19 MS. JENNINGS: Yes.

20 Q. (By Ms. Jennings) You also have a
21 conviction for concealing a homicidal death, correct?

22 A. Yes.

23 Q. And you have a five-year sentence for that,
24 correct?

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1 A. Yes.

2 Q. Are those sentences running together or
3 back to back?

4 A. Concurrent.

5 Q. Do you have any other convictions in other
6 states or countries?

7 A. No.

8 Q. Other than when you leave for court, you've
9 been here at Menard since you were processed, correct?

10 A. Yes.

11 Q. And your claims in this case all relate to
12 your time at Menard, right?

13 A. Yes.

14 Q. The claims in this case began on
15 February 5, 2014, right?

16 A. Yes.

17 Q. And that was in the West Cell House?

18 A. Yes.

19 Q. That's where you were housed at the time?

20 A. Yes.

21 Q. And you were housed with Inmate Edgar Diaz,
22 correct?

23 A. Yes.

24 Q. On February 5, 2014, your cell was shaken

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1 down, correct?

2 A. How shaken down?

3 Q. They searched your cell, right?

4 A. I don't know.

5 Q. Okay. You were removed from your cell on
6 that day?

7 A. No.

8 Q. Weren't you housed in the holding cell in
9 the West Cell House?

10 A. I don't think I understood that question.

11 Q. Okay. Are you familiar with what your
12 claims are in this case?

13 MS. GOODWIN: Objection to form.

14 THE INTERPRETER: I don't understand your
15 question.

16 Q. (By Ms. Jennings) You filed a lawsuit in
17 this case regarding events on February 5, 2014, right?

18 A. Yes.

19 Q. What happened on that day?

20 A. We were in the Gallery Number 7 and we went
21 to eat, and when we were coming back, the police
22 officers asked me if I was Garcia, and I replied,
23 "No," and they let me pass through.

24 Q. Before you move on, do you know who it was

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1 **that asked you if you were Garcia?**

2 A. No.

3 **Q. What happened next?**

4 A. So he let me go. He let me go through. So
5 when I stopped by my cell, the doors were open, but my
6 cell was not unlocked. My cell was not open, and so
7 the officers that were checking every single cell,
8 they noticed that it was closed. When they finally
9 arrived to our cell, they mentioned to me and the
10 other inmate that we have to go right in front.

11 **Q. Did you ever enter your cell?**

12 A. No.

13 **Q. Who were the officers that told you you had**
14 **to go in front?**

15 A. I can't remember.

16 **Q. Do you know if they were the defendants in**
17 **this case?**

18 A. I can't remember.

19 **Q. The other inmate that was with you was**
20 **Diaz?**

21 A. Yes.

22 **Q. What happened next?**

23 A. When we arrived right in front of the
24 officers, they searched us.

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1 Q. Where were you located at that point?

2 A. How is that? I don't know.

3 Q. When they searched you, where were you
4 standing?

5 A. Right in front of where the galleries
6 start.

7 Q. You weren't in front of your cell?

8 A. No.

9 Q. Were you on your gallery?

10 A. Yes.

11 Q. At the end of your gallery?

12 A. Yes.

13 Q. Were you inside of any sort of holding
14 cell?

15 A. What do you mean? When they searched us?

16 Q. Yes.

17 A. No.

18 Q. Okay. After you were searched, what
19 happened?

20 A. They said to go downstairs, down to the
21 holding cell.

22 THE INTERPRETER: I need the volume up
23 because there is a lot of noise going around, and it
24 is distracting me.

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1 Q. **(By Ms. Jennings) Who told you to go**
2 **downstairs?**

3 A. I can't remember.

4 Q. **Did both inmates, both you and Diaz, go**
5 **downstairs?**

6 A. Yes.

7 Q. **Were you escorted down there?**

8 A. We went in first, the two of us, and then
9 the officers were right behind us.

10 Q. **Were you handcuffed?**

11 A. No.

12 Q. **You went into the holding cell?**

13 A. Not on the odd side because there was
14 helium, and we were told to go to the even -- to the
15 holding cell, even side.

16 Q. **So you couldn't go into your holding cell,**
17 **so you went to the other side?**

18 A. Yes.

19 Q. **Were the officers walking behind you to the**
20 **other cell?**

21 A. Yes.

22 Q. **You went to the holding cell on the even**
23 **side?**

24 A. Yes.

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1 **Q. What happened when you got there?**

2 A. So we were told to wait because they were
3 finishing chow. Odd side, they were running the chow.

4 **Q. So you had to wait because the lines were**
5 **walking by?**

6 A. Yes.

7 **Q. Did you wait in the holding cell?**

8 A. Me and Diaz.

9 **Q. Were you locked in the holding cell?**

10 A. Yes.

11 **Q. And were you handcuffed?**

12 A. No.

13 **Q. What happened next?**

14 A. We were there approximately 30 minutes, but
15 during that time, Diaz said that he needed to use the
16 bathroom, and I told him that we don't have any
17 officers there, but then an officer arrived, and he
18 said, "I'm going to lock you down in the bathroom."

19 THE WITNESS: No, not in the bathroom. In
20 the showers.

21 THE INTERPRETER: In the showers. Not in
22 the bathrooms, in the showers.

23 **Q. (By Ms. Jennings) Who was that officer?**

24 A. I can't remember. So that took about 10

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1 minutes, and Diaz came back with me at the holding
2 cell.

3 Q. So the officer allowed Diaz to go to the
4 bathroom?

5 A. I don't know.

6 Q. Diaz left the cell?

7 A. He went to the showers. They took him to
8 the showers, but I don't believe that he mentioned to
9 the police officer that he needed to go to the
10 bathroom. I think that they were just taking us apart
11 from each other so that we would not be able to
12 communicate.

13 Q. Do you know which officer took Diaz to the
14 showers?

15 A. No.

16 Q. While you were in the holding cell, were
17 inmates walking by?

18 A. When we were there, just waiting?

19 Q. Yes.

20 A. The counselor was there.

21 Q. Your counselor?

22 A. I think so. I'm not so sure if it was mine
23 or not.

24 Q. Was it a man or a woman?

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1 A. Man.

2 Q. What was his name?

3 A. I don't remember.

4 Q. What was the counselor doing?

5 MS. GOODWIN: Objection to foundation.

6 You can answer.

7 THE INTERPRETER: He was just doing his
8 routine, but I asked him about some items that they
9 had taken from me. I have a grievance, but they told
10 me to contact property so that I can pick it up, and
11 that's what I was -- I was trying to let him know
12 about that.

13 Q. (By Ms. Jennings) So you were asking about
14 a grievance regarding property?

15 A. Yes.

16 Q. When did you write that grievance?

17 A. I can't remember.

18 Q. Were inmates also walking by?

19 A. No.

20 Q. After Diaz returned to the holding cell,
21 what happened?

22 A. We were there just waiting.

23 Q. For how long?

24 A. I can't remember.

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1 **Q. What happened next?**

2 A. I'm not so sure. They were running the
3 line from the store and from the gym. So they were
4 running that line in and out, coming back, in and out,
5 but I'm not so sure about that.

6 **Q. When you say they were running a line, you**
7 **mean inmates were being escorted?**

8 A. No, the officers were upstairs because I
9 think it was Gallery 8 or 10 that was coming back from
10 the store.

11 **Q. So the inmates were walking by the holding**
12 **cell to come back?**

13 A. Yes.

14 **Q. Were you talking to any of the inmates**
15 **walking by?**

16 A. No.

17 **Q. Were you talking with Inmate Diaz?**

18 A. Yes.

19 **Q. What happened next?**

20 A. So then all the officers went downstairs
21 and they were right in front of us, and I noticed that
22 Major Thomas was there and Sergeant Qualls and some
23 other officers.

24 **Q. Do you know who any of those officers were?**

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1 A. Purdom; Berry. I don't know. I think it's
2 another -- I can't remember the exact names.

3 **Q. The major you mentioned, Major Thomas, is**
4 **that his first name or last name?**

5 A. I don't know if that's his name or last
6 name.

7 **Q. So they were standing in front of the**
8 **holding cell?**

9 A. Yes.

10 **Q. What happened next?**

11 A. I noticed that the major, Major Thomas, he
12 got close to the sergeant and they were speaking, but
13 they were, like, playing. But the major hit the
14 sergeant on his knee.

15 THE WITNESS: No, no, no.

16 THE INTERPRETER. No. On the upper leg.

17 And I noticed that his expression changed.
18 The sergeant's expressions had changed after that,
19 like that bothered him.

20 **Q. (By Ms. Jennings) Do you know what the**
21 **major said to the sergeant?**

22 A. I know who that sergeant was.

23 **Q. Do you know what the major said to the**
24 **sergeant?**

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1 A. I don't believe I can hear her.

2 THE INTERPRETER: I have to repeat
3 everything he's saying. He thought that I was talking
4 to him.

5 Q. **(By Ms. Jennings) Did you hear what the**
6 **major said?**

7 A. No.

8 Q. **Okay. You and Diaz were still in the**
9 **holding cell?**

10 A. Yes.

11 Q. **What happened next?**

12 A. Then, after the major hit the sergeant's
13 knee, I think he went outside, and all the officers
14 were right in front of the holding cell and right in
15 front of us, and that's when they ran the chow line,
16 and they were -- when they were running out, someone
17 that I knew was going by, and he asked me, "Are you
18 good?" And I said, "Yes, I'm good."

19 Q. **Who was that inmate?**

20 A. I can't remember.

21 Q. **And what happened next?**

22 A. When I replied to that, the sergeant saw
23 me. He noticed me, and he told me, "Shut the fuck up
24 and face the wall."

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1 Q. And what did you do?

2 A. I did what he told me, but he said, "Sit
3 down."

4 Q. So you were told to sit down?

5 A. Yes.

6 Q. And did you do that?

7 A. And I said, "The floor is cold," and then
8 he told me again, "Shut the fuck up."

9 THE WITNESS: No, no. "Sit the fuck down."

10 THE INTERPRETER: "Sit the fuck down."

11 He said, "No, no, no. Sit the fuck down."

12 Q. (By Ms. Jennings) And what did you say in
13 response?

14 A. That the floor was cold.

15 Q. And what did he say after that?

16 A. Then they told what happened to Diaz, too,
17 to face the wall.

18 Q. He told Diaz to face the wall?

19 A. Yes, they told Diaz that, too, but then
20 from that point on, they said, "No, no. Cuff up."

21 Q. And it was the sergeant telling you this
22 the whole time?

23 A. I don't know if that was the sergeant
24 because I was facing the wall.

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1 Q. Did you ever sit down?

2 A. No.

3 Q. Did you cuff up?

4 A. After Diaz was told that he had to cuff it
5 up, they got him out of the holding center. Then they
6 told me to cuff up, too, and I walked backwards and
7 they cuffed me up. They handcuffed me.

8 Q. Do you know who handcuffed you?

9 A. I couldn't see. They handcuffed me from my
10 back.

11 Q. Did you resist the cuffing?

12 A. No.

13 Q. Did they then let you out of the holding
14 cell?

15 A. They -- Officer Berry got me out of the
16 holding cell. He was from the left side. He was on
17 my left side, and the sergeant was on my right side.

18 So when I was getting out of there, the
19 sergeant, he hit me on my jaw and I fell on the
20 ground, but Officer Berry got me up, and then he took
21 me to the corner of the shower -- and there's a door
22 right there, like in the angle of that shower -- and
23 that's when he smashed my head against the concrete
24 wall. And he was hitting me on my head. The sergeant

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1 was punching my back and kicking me on my leg, and
2 when I fell, they were kicking me on my back and in my
3 stomach, like right here. How would you say right
4 here? I guess my lower stomach.

5 They were wanting to kick me on my stomach.
6 They wanted to kick my groins, but they hit me here on
7 my lower stomach. So then I told them to stop, but I
8 was trying to breathe and they -- I was gasping. And
9 then the sergeant, he was mimicking everything that I
10 was saying. I was like, "(descriptive sound)," and he
11 kept saying, "Shut the fuck up," and he kept punching
12 me.

13 **Q. What next?**

14 A. So then he said, "I'm going to take him."
15 The sergeant said, "I'm going to take him," and that's
16 when he grabbed me by my arm, my left arm, and he
17 grabbed me so hard that I fell, and then he got me up
18 again, and the door was in between -- it was hardly
19 open. When we went through that door, he hit my head.
20 The door -- to open the door, he hit my head. And I
21 was hardly walking by myself by then.

22 **Q. Okay. I'm going to go back a little bit.**

23 A. Okay.

24 **Q. So Berry and Qualls escorted you to the**

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1 **shower?**

2 A. No.

3 THE INTERPRETER: You said the shower,
4 right?

5 MS. JENNINGS: Yes.

6 THE INTERPRETER: No.

7 **Q. (By Ms. Jennings) Who took you out of the**
8 **holding cell?**

9 A. I didn't hear that question.

10 **Q. Who took you out of the holding cell?**

11 A. I don't remember.

12 **Q. You said that Defendant Berry took you from**
13 **the left, and then the sergeant was on your right?**

14 A. Yes.

15 **Q. And that was from the holding cell to the**
16 **shower?**

17 A. Not inside the shower.

18 **Q. On the way to there?**

19 A. Yes.

20 **Q. Okay. You said that the sergeant hit you**
21 **on the jaw?**

22 A. On the right side, yes.

23 **Q. Was this before you were in the shower?**

24 A. Before.

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1 Q. Was it on the way or right in front of the
2 holding cell?

3 A. When they -- basically instantly right
4 after they got me out.

5 Q. What did he hit you with?

6 A. With his fist.

7 Q. With a closed fist?

8 A. Closed fist.

9 Q. How many times did he hit you in the jaw?

10 A. I can't remember, but it was -- that was
11 the first one, but then when they took me close to the
12 showers, about two, three more times.

13 Q. When you were initially removed from the
14 cell, it was just one hit?

15 A. Yes.

16 Q. And then you fell to the ground?

17 A. Yes.

18 Q. And Defendant Berry lifted you up?

19 A. Yes.

20 Q. And then you were taken to the shower?

21 A. Yes.

22 Q. Were you hit, kicked, or punched any other
23 way between the cell and the shower?

24 A. No, just at the shower.

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1 Q. When you got to the shower, you said they
2 smashed your head into the wall?

3 A. Yes.

4 Q. Who did that?

5 A. Berry.

6 Q. Were you standing up?

7 A. I don't understand that question.

8 Q. Were you standing up or bent over or
9 sitting down?

10 A. When he hit me against the wall, and they
11 were punching me in the back and my stomach and my
12 jaw, my head, behind my head, and like I said, they
13 got all my air completely out --

14 Q. So --

15 A. -- and then I fell. They were kicking me,
16 also, and they were kicking me -- they were trying to
17 kick my groin areas, my private parts, and then -- but
18 they hurt me right under my stomach, like on my lower
19 stomach on the left side.

20 Q. How many times did the sergeant
21 hit -- punch you?

22 A. Many times.

23 Q. Can you give me an estimate?

24 A. Since I remember, about 15 times.

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Osbaldo Jose-Nicolas 5/26/2017

1 Q. So the sergeant punched you about 15 times?

2 A. Yes.

3 Q. How many times did the sergeant kick you?

4 A. That I remember, about nine times.

5 Q. How many times was your head hit into the
6 wall?

7 A. Only one time.

8 Q. Did the sergeant do anything else to you
9 other than punch and kick?

10 A. Can you repeat that question?

11 No, he used to repeat everything --

12 THE WITNESS: Mimicking.

13 THE INTERPRETER: He was mimicking me.

14 And, again, he was just punching me.

15 Q. (By Ms. Jennings) What about physically?
16 Was he doing anything other than punching and kicking?

17 A. No.

18 Q. Defendant Berry, how many times did he
19 punch you?

20 A. About -- since I remember, six times.

21 Q. And how many times did he kick you?

22 A. About three times.

23 Q. And it was Berry who hit your head into the
24 wall?

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 A. Yes.

2 Q. Did Berry do anything else physically?

3 A. No.

4 Q. Of the 15 punches that the sergeant did,
5 where were those at?

6 MS. GOODWIN: Objection to form;
7 foundation.

8 Q. (By Ms. Jennings) Let me rephrase that
9 question.

10 You said the sergeant punched you about 15
11 times, right?

12 A. Yes.

13 Q. Where on your body did he punch you?

14 A. On my back, on my head, here on my lower
15 stomach, and on my jaw.

16 Q. Where on your body did the sergeant kick
17 you?

18 A. Right here on my ribs, on my lower stomach
19 on the left side.

20 Q. Anywhere else?

21 A. In my legs.

22 Q. Is that it?

23 A. Kicking me, yes.

24 Q. Sergeant -- or Defendant Berry, where did

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 **he punch you at on your body?**

2 A. My stomach, my back, behind my head, and in
3 my jaw.

4 **Q. And where did Defendant Berry kick you?**

5 A. My legs.

6 **Q. Then you fell to the ground?**

7 A. Yes.

8 **Q. And they were continuing to kick you?**

9 A. Yes.

10 **Q. The kicks that you received when you were**
11 **on the ground, did you include those in the numbers**
12 **you gave me -- include those kicks in the numbers you**
13 **gave me?**

14 A. I'm not so sure.

15 **Q. So when you said that Sergeant Berry -- or**
16 **Sergeant -- when you said that the sergeant punched**
17 **you 15 times, was that all before you hit the ground?**

18 A. Yes.

19 **Q. Okay. So when you hit the ground, who**
20 **kicked you?**

21 A. The sergeant.

22 **Q. How many times?**

23 A. About four times.

24 **Q. Where did he kick you on your body?**

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 A. Right here in my stomach, on the side, in
2 my legs.

3 Q. Did he punch you while you were on the
4 ground?

5 A. No. I don't remember that.

6 Q. Defendant Berry, did he kick you while you
7 were on the ground?

8 A. I don't remember.

9 Q. You asked them to stop?

10 A. Yes, but I could hardly breathe when I was
11 asking that.

12 Q. You were gasping for air?

13 A. Yes.

14 Q. And that's when the sergeant was mimicking
15 you?

16 A. Yes.

17 Q. And they told you to shut up?

18 A. Yes.

19 Q. And then they punched you more?

20 A. Yes.

21 Q. Were you still on the ground?

22 A. No.

23 Q. Who lifted you up?

24 A. Berry and the sergeant.

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Osbaldo Jose-Nicolas 5/26/2017

1 Q. Who punched you at that point?

2 A. The sergeant.

3 Q. How many times?

4 A. About five times, and then about six times,
5 he kicked me on my legs.

6 Q. When he punched you, where did he punch
7 you?

8 A. My back.

9 Q. Anywhere else?

10 A. In my legs, he kicked me.

11 Q. Did Defendant Berry kick you or punch you
12 at that point?

13 A. No, he didn't do any more. He was only
14 holding me, pushing my head against the wall so that I
15 wouldn't move or fall.

16 Q. Did you fall again?

17 A. No.

18 Q. Is this when they escorted you to the door?

19 A. When the sergeant grabbed me by my arm,
20 that's when I fell again.

21 Q. They lifted you up?

22 A. Yes.

23 Q. And that's when you were escorted to the
24 door?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. Yes.

2 Q. Your head was hit on the door?

3 A. Yes.

4 Q. Who hit your head on the door?

5 A. The sergeant.

6 Q. One time or more than once?

7 A. One time.

8 Q. Did you leave the shower after that?

9 A. No.

10 Q. You stayed in the shower?

11 A. No, right after the sergeant grabbed me, he
12 took me out, and we came here to North 2.

13 Q. Okay. When you were in the shower, did you
14 receive any other hits or punches or kicks other than
15 what you've told me?

16 A. No.

17 Q. Was anyone else present?

18 A. Yes.

19 Q. Who else was there?

20 A. Officer Purdom and some other officers, but
21 I can't remember their names.

22 Q. Can you describe them?

23 A. No.

24 Q. Were there any inmates in the shower?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. I don't remember.

2 Q. Do you remember anyone else being present?

3 A. No.

4 Q. Was Officer Snell there?

5 A. Yes, I think that that officer was the one
6 who took Diaz. Snell had Diaz detained.

7 Q. So Snell and Diaz were not in the shower
8 with you?

9 A. No.

10 Q. At the time you left the shower, what
11 injuries were you aware of?

12 A. My jaw hurt a lot. I had -- on my left
13 side, my forehead had an abrasion and here on my lower
14 stomach and on my legs, and my hands hurt, too,
15 especially on this side, the wrist.

16 Q. While you were in the shower, were you
17 handcuffed?

18 A. Yes.

19 Q. Were you cuffed in the front or back?

20 A. Back.

21 Q. Other than the cut on your forehead, did
22 you have any other cuts that you knew about?

23 A. No.

24 Q. Were you conscious?

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 A. No.

2 Q. When did you lose consciousness?

3 A. When my head was hurt in the bathroom, in
4 the showers.

5 Q. So you lost consciousness in the shower?

6 A. Yes.

7 Q. Is this when they hit your head into the
8 wall?

9 A. Yes.

10 Q. How long were you out for?

11 A. I can't remember.

12 Q. Were you conscious when they were punching
13 and kicking you?

14 A. That's when I lost my conscious.

15 Q. When you first arrived in the shower?

16 Did you lose your consciousness when you
17 first arrived in the shower?

18 A. No.

19 Q. It was during the punches and kicks?

20 A. Yes.

21 Q. And you don't know how long you were out
22 for?

23 A. No.

24 Q. Were you aware of what was happening to

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 **you?**

2 A. No.

3 **Q. Everything you've testified to, do you**
4 **personally recall all of that?**

5 THE INTERPRETER: Repeat the question for
6 the interpreter, please.

7 **Q. (By Ms. Jennings) Everything that you've**
8 **been talking about, the punches and kicks, do you**
9 **remember all those?**

10 A. Yes.

11 **Q. When you left the shower, were you**
12 **conscious?**

13 A. Yes.

14 **Q. Who escorted you over to North 2?**

15 A. Sergeant Qualls.

16 **Q. Was anyone else there?**

17 MS. GOODWIN: Objection to form.

18 **Q. (By Ms. Jennings) Did anyone else escort**
19 **you?**

20 A. No.

21 **Q. Did he punch or kick you at all during the**
22 **escorting?**

23 A. No, he was just dragging me.

24 **Q. Were your feet touching the floor?**

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 A. Yes.

2 Q. Were you walking forward?

3 A. Yes.

4 Q. And you were still handcuffed behind you?

5 A. Yes.

6 Q. Did the sergeant have ahold of your
7 handcuffs?

8 A. He was holding me from my arm. I had my
9 head down, and he was holding me from my arm and
10 walking.

11 Q. Were you walking?

12 A. I was forcing myself.

13 Q. Did you fall during the escort?

14 A. No.

15 Q. Where were you placed when you got to
16 North 2?

17 A. I'm sorry. When we were walking in the
18 tower that is right in front of North 1, the one that
19 was in that tower told the sergeant, "Take him to the
20 hospital," but the sergeant, he didn't listen to him,
21 or he just decided to act like he didn't hear him
22 because he had his face like he was upset.

23 But the tower told me, "Take him to the
24 hospital," and the sergeant said, "He will get some

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 health care treatment at North 2." But from that
2 point on, since I was very tired and under a lot of
3 pain, I was unable to walk and I fell, and the
4 sergeant was trying to get me up to walk, but I
5 couldn't walk because he was tired, too.

6 So then another officer approached, and
7 then he told the sergeant -- he asked the sergeant if
8 he needed some help, and between the two of them, they
9 lifted me up. They got me up. Each of them grabbed
10 me from my arm. And I had a sweater, and they grabbed
11 me from the sweater, and I felt like they were choking
12 me.

13 Q. Who was that other officer?

14 A. I don't remember his name, but he was tall.

15 Q. Do you know if he was one of the
16 defendants?

17 A. No.

18 Q. You don't know, or he wasn't?

19 A. No, he's not.

20 Q. After they lifted you up, what happened?

21 A. They left me at the bathroom from Gallery
22 Number 2, and they threw me down to the ground.

23 Q. So they threw you into the shower in
24 North 2?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. Yes.

2 Q. I want to go back to the West Cell House
3 for a second.

4 A. Okay.

5 Q. Where is the shower in relation to the
6 holding cell?

7 A. I'm sorry. Can you repeat that question?

8 Q. How far away from the holding cell is the
9 shower?

10 A. About five meters.

11 Q. Did you have to go up or down the stairs?

12 A. No.

13 Q. It's on the same level?

14 A. Yes, it's on the same level. It's
15 downstairs.

16 Q. Did the sergeant say anything to you during
17 your escort?

18 A. No.

19 Q. Do they put you in the shower in North 2?
20 What happened? What happened then?

21 A. They threw me there in the bathroom, in the
22 tub. I asked for a nurse. The officer that was there
23 told me, "In a moment, they're going to be here."

24 Q. Before that, had you asked for a nurse?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. No. I couldn't. I wasn't thinking well
2 enough.

3 Q. Do you know who that officer was?

4 A. No.

5 Q. Do you know what time it was when you got
6 to North 2?

7 A. No.

8 Q. How long were you in the shower before you
9 were seen by medical?

10 A. About five minutes or more.

11 Q. Less than ten minutes?

12 A. I think so.

13 Q. When you asked for the nurse, had the
14 sergeant already left?

15 A. Yes.

16 Q. So after he threw you in the shower, he
17 left?

18 A. Correct.

19 Q. Who came to see you?

20 A. The nurse came, Aimee Lang, and then she
21 asked me, "What happened?"

22 Q. Did she speak to you in English or Spanish?

23 A. In English.

24 Q. Did you understand what she said?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. Yes.

2 Q. What did you tell her?

3 A. That the officers from the West House, they
4 have beaten me.

5 Q. Did you tell her what injuries you had?

6 A. Yes.

7 Q. What did you say your injuries were?

8 A. I told her that I was in pain. My jaw was
9 hurting. I had a lot of pain in my jaw, right here in
10 my forehead, on the left side of my forehead, and on
11 the left side on my stomach, lower stomach.

12 Q. Were you able to describe those injuries to
13 her in English?

14 A. Yes, because I was also pointing.

15 Q. Did you say anything else to her?

16 A. Yes, because I noticed that she wasn't
17 writing anything down, and so I said to her, "Why are
18 you not writing anything down about what I'm telling
19 you?" She said, "Okay," and then she took a piece of
20 paper, but then during that time, she was laughing,
21 and then she told the other police officer -- she
22 said, "Ha ha ha. He want a lawsuit," and that's when
23 she started writing.

24 Q. Did you say anything else to her?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. Yes.

2 Q. What did you say?

3 A. That I needed for her to do an X-ray for my
4 jaw because I had no idea if it was broken or
5 dislocated.

6 Q. What did she say to that?

7 A. She said she can see that it was fine and
8 that I have nothing, and then she left me.

9 Q. Did she say anything else to you before she
10 left?

11 A. No.

12 Q. Did you ask her for anything other than an
13 X-ray?

14 A. I don't remember.

15 Q. At this time back in 2014, did you take
16 medication daily?

17 A. No.

18 Q. Did you ask anyone else for medical
19 attention after she left?

20 A. On that day, no. I can't remember.

21 Q. So on that day, the only person you asked
22 for medical attention was the officer and the nurse?

23 A. That's correct.

24 Q. And the officer was the one in North 2?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. Yes.

2 Q. Can you describe the cut in your forehead?

3 A. No, because I couldn't see. I couldn't
4 just see it.

5 Q. Was it bleeding?

6 A. Yes.

7 Q. Was the blood dripping down your face?

8 A. It was painful, most of all. At first, it
9 was, but then I cleaned it up. I noticed that I had
10 blood when I put my hand on it.

11 Q. So you noticed blood when you touched it?

12 A. Yes.

13 Q. Was it a lot of blood?

14 A. At that moment, yes.

15 Q. Did it stop bleeding?

16 A. Yes.

17 Q. When did it stop bleeding?

18 A. I don't know. I can't remember. But it
19 wasn't dripping. The blood wasn't dripping.

20 Q. Did it stop that day?

21 A. Yes.

22 Q. When you noticed it when you touched it,
23 was that before Nurse Lang came to see you?

24 A. After.

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1 Q. How long did you stay in the showers?

2 A. I can't remember.

3 Q. Did you see anyone else in the showers in
4 North 2?

5 A. No, just the police.

6 Q. Did they come to check on you?

7 A. No.

8 Q. Did they come to escort you to a cell?

9 A. Yes.

10 Q. Were any of the defendants there at that
11 point?

12 A. No.

13 Q. So officers in North 2 escorted you to your
14 cell?

15 A. Can you repeat that question? I'm sorry.

16 Q. Officers in North 2 escorted you to a
17 segregation cell?

18 A. No.

19 Q. How were you removed from the showers in
20 North 2?

21 A. The officer that works at North 2, he took
22 the handcuff off, and he told me to change my clothes
23 and he gave me some -- from North 2, that's where he
24 gave me some clothes, from there, and then when I

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

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1 changed, that's when he took me to Gallery Number 4.

2 I can't remember which cell.

3 Q. When Aimee Lang was there, were you
4 handcuffed?

5 A. I can't remember.

6 Q. Who removed the cuffs from you when you
7 were in the segregation shower?

8 A. The officer that works at North 2.

9 Q. Once you got to 4 Gallery, when's the next
10 time you saw a medical professional?

11 A. Since I was under pain, I found a way to
12 make an appointment, and I did. I requested to see
13 someone so that they could check my jaw and my left
14 side of my stomach -- on my lower stomach on the left
15 side, and also my forehead. And I wanted to know if
16 they could do an X-ray because I wanted to find out
17 why was that hurting so much. I wanted to know if it
18 was something dislocated or broken.

19 Q. On 4 Gallery, did you ask for medical
20 attention?

21 A. I was trying to.

22 Q. Who were you trying to ask?

23 A. The officers that worked there.

24 Q. And a couple of days later, you saw a

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

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1 **nurse?**

2 A. Yes.

3 **Q. Do you recall who that nurse was?**

4 A. Ms. Missy.

5 **Q. And she referred you to the dentist?**

6 A. When I arrived there to see her, I told her
7 what I had. I told her that I had pain in my
8 forehead. I had pain here under my stomach on the
9 left side on the lower side, and my jaw hurt and that
10 I couldn't open it up a lot. I couldn't even eat.
11 And when I was trying to open it up and close it, it
12 was making a sound. So that's when she referred me to
13 X-ray.

14 **Q. And she referred you to the dentist?**

15 A. Yes.

16 **Q. Were you ever diagnosed with a hernia?**

17 A. No.

18 **Q. Did you ever receive treatment other than**
19 **Tylenol?**

20 A. I can't remember.

21 **Q. Were you ever sent outside of the prison**
22 **for a medical appointment?**

23 A. Yes, but that was about September 2014.

24 **Q. Was that related to your injuries from this**

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

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1 incident?

2 A. No.

3 Q. The next day, you received two disciplinary
4 tickets, right?

5 A. Yes.

6 Q. The first one was regarding items found in
7 your cell?

8 THE INTERPRETER: Can you repeat the
9 question for the interpreter, please?

10 Q. (By Ms. Jennings) The first one was
11 regarding items found in your cell?

12 A. That's what the ticket stated.

13 MS. JENNINGS: I'm going to mark something.

14 I'm going to mark this as Defendant's

15 Exhibit A.

16 (Defendant's Exhibit A, Ticket, was
17 marked.)

18 Q. (By Ms. Jennings) Is this one of the
19 tickets you received?

20 A. Yes.

21 Q. And this ticket says that homemade
22 intoxicants were found in your cell?

23 A. That's what it says here.

24 Q. Were you present when your cell was

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1 **searched?**

2 A. No, I was not. I was in the kitchen
3 eating.

4 **Q. You were served with a copy of this ticket?**

5 A. Yes.

6 MS. JENNINGS: I'm going to mark another
7 Exhibit B.

8 (Defendant's Exhibit B, Ticket, was
9 marked.)

10 **Q. (By Ms. Jennings) I'm showing you what's**
11 **marked as Exhibit B.**

12 **Is this the other ticket you got that day?**

13 A. Yes.

14 **Q. And this ticket says that you were told to**
15 **stop interfering with line movement and to have a**
16 **seat?**

17 A. That's what it says in here.

18 **Q. You were served a copy of this ticket?**

19 A. Yes.

20 **Q. Both of these exhibits indicate that you**
21 **were served on February 6, 2014; is that correct?**

22 A. I'm sorry. I don't believe -- can you
23 repeat that question again?

24 **Q. The disciplinary tickets in front of you,**

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

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1 **they both say that you were served on**

2 **February 6, 2014?**

3 A. Yes.

4 **Q. And is that when you were served?**

5 A. I'm sorry. Repeat the question again.

6 **Q. Is that when you actually were served?**

7 A. Yes.

8 **Q. You went before the Adjustment Committee on**
9 **February 10, 2014; is that correct?**

10 A. Yes.

11 **Q. Okay.**

12 A. So I have something to say. Can I say
13 something?

14 **Q. Sure.**

15 A. When I received those tickets, I wanted to
16 cite some witness, but I didn't have any time because
17 the officer only threw them through my door. I didn't
18 have the chance to sign them and to write down the
19 name of the witness.

20 MS. JENNINGS: C.

21 (Defendant's Exhibit C, Final summary
22 report, was marked.)

23 **Q. Did you receive a copy of the tickets?**

24 A. Yes.

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1 Q. After you got your copy, did you attempt to
2 write down any requests for a witness?

3 A. I couldn't do it because I didn't have a
4 pen or something to write it down.

5 Q. I'm going to show you what we've marked as
6 Exhibit C.

7 MS. GOODWIN: For the record, what is the
8 Bates number? Is that the 44?

9 MS. JENNINGS: 44 and 45.

10 Q. (By Ms. Jennings) Have you seen this
11 before?

12 A. Yes.

13 Q. And this is the final summary report from
14 the Adjustment Committee; is that right?

15 A. Yes.

16 Q. It says towards the top that the hearing
17 date was February 10th?

18 A. Yes.

19 Q. And this is for both of the tickets that I
20 showed you?

21 A. Okay.

22 Q. Do you agree with that?

23 A. With the date, yes.

24 Q. Did the Adjustment Committee come to your

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

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1 **cell?**

2 A. No.

3 **Q. You left your cell?**

4 A. Yes.

5 **Q. Where did you go?**

6 A. An officer got me out of my cell, and he
7 took me to the Adjustment Committee.

8 **Q. Where was that at?**

9 A. The North 2. I think on the second floor.

10 **Q. Was it on the same gallery?**

11 A. I think so.

12 **Q. Did you have to go up or downstairs?**

13 A. I can't -- I don't remember.

14 **Q. Was it an office?**

15 A. No. No, I don't remember.

16 **Q. Was it a little room?**

17 A. Yes.

18 **Q. Who was there?**

19 A. Someone with a white shirt and some other
20 officers.

21 **Q. How many?**

22 A. Three or four. I'm not so sure.

23 **Q. Were any other inmates there?**

24 A. No.

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1 **Q. What happened when you arrived?**

2 A. The one with the white shirt, he started
3 reading the citations, and I told him that I wanted to
4 have my witness there, and he said that, "You lost the
5 chance because you didn't sign it," but I found a way
6 so that I could write something down, and I presented
7 that to him and he read that, and then he handed it
8 back to me. And I told him -- well, he asked me how I
9 pled, guilty or not guilty, and I said not guilty.

10 **Q. Who was the witness you wanted?**

11 A. The officer that wrote the ticket,
12 the -- 203 and 202, and from 304 to 303, I wanted
13 Inmate Diaz.

14 **Q. Did you tell the Adjustment Committee who**
15 **you wanted as your witness?**

16 A. I don't remember. I only wrote it down.

17 **Q. When you wrote something down, what did**
18 **that say?**

19 A. That in this ticket --

20 **Q. And that's Exhibit A?**

21 A. Yes. Exhibit A, that it didn't have the
22 cell number and it didn't say which cell was found the
23 contraband, the possession, and, also, it said here
24 something intoxicant was there, a needle in

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1 box 008851, and a TV, that that wasn't mine.

2 Q. That's what you wrote and gave to the
3 Adjustment Committee?

4 A. Yes.

5 Q. Did you write anything about the other
6 ticket?

7 A. Yes. I said -- I never said this. That's
8 what the officer said, that I was interrupting with
9 the line and that he said to stop and have a seat, but
10 the holding cell in the even side, there are not
11 chairs to sit down, so he couldn't just say, "Have a
12 seat," because what happened is what I said, but he
13 said, "Sit the fuck down." That's what he said. He
14 didn't say, like he says here, "Have a seat," and that
15 I responded. I don't know what it says in here.
16 Something like that. He wrote down that I said, "Fuck
17 that," and I didn't say that, either.

18 Q. You put all of that in your writing?

19 A. Yes. And that I told him to take this into
20 consideration and to give me the less -- minimum time
21 that they could, but this one here had nothing to do
22 with it.

23 Q. When you wanted Inmate Diaz to be your
24 witness, did you want him to support that you didn't

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

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1 **say, "Fuck that"?**

2 A. That's correct.

3 **Q. Anything else you wanted him to say as your**
4 **witness?**

5 A. I couldn't force him about this one, but
6 here, that's the exhibit.

7 **Q. Number A or Letter A?**

8 A. Yes, the A.

9 **Q. Okay. Did you understand what the two**
10 **tickets were charging you with?**

11 A. No.

12 **Q. You had them in your cell with you for a**
13 **few days?**

14 A. Yes.

15 **Q. Did you have a cellmate?**

16 A. No.

17 **Q. Did you have other inmates near you who**
18 **spoke Spanish?**

19 A. No.

20 **Q. You understood what -- did you understand**
21 **what the charges were?**

22 A. Yes.

23 **Q. And you understood enough to tell them you**
24 **didn't do it?**

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Osbaldo Jose-Nicolas 5/26/2017

1 A. Yes.

2 Q. Defendants Hughes and Hart, were they the
3 Adjustment Committee chairpeople?

4 A. I think that Hughes was the chairman.

5 Q. And was Hart also present?

6 A. Yes.

7 Q. Did you ever request to have a translator?

8 A. On the note, I asked for a translator.

9 Q. Did you write the note in Spanish or
10 English?

11 A. In English.

12 Q. Did someone help you write it?

13 A. No.

14 Q. You knew enough English to be able to write
15 it down?

16 A. I believe he could understand what I was
17 trying to write down because it wasn't too hard to ask
18 for an interpreter, and I'm familiarized a little bit
19 with the letters, but I have a lot of problems to
20 pronounce it.

21 Q. It's easier for you to write it down?

22 A. What I wrote down, yes.

23 Q. You wrote a grievance after this, right?

24 A. Yes, but when we were at the

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1 Adjustment Committee, I told the chairman to provide
2 me with the rights to appeal to -- I mean I told him
3 in English. I told him, "Could you please motion me
4 my rights to appeal?" And then he said, "You have the
5 right." He told the officer, "Take him out. Take him
6 out," and that's when they took me out, and then he
7 gave me back that paper that I gave him.

8 Q. Do you still have that paper?

9 A. No.

10 Q. What did you do with it?

11 A. I threw it away.

12 MS. JENNINGS: Can we mark this as
13 Exhibit D?

14 (Defendant's Exhibit D, Grievance, was
15 marked.)

16 MS. JENNINGS: And this is Pages 42 and 43.

17 Q. (By Ms. Jennings) Is that a grievance you
18 filed?

19 A. Yes.

20 Q. Is that your handwriting?

21 A. Yes.

22 Q. You can take a minute to read it. And let
23 me know when you've had a chance to review it.

24 A. Okay. I read it.

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1 Q. Did anyone help you write this grievance?

2 A. No.

3 Q. Is this your handwriting?

4 A. Yes.

5 Q. Is this grievance true and accurate?

6 A. Yes.

7 Q. Is there anything in this grievance that's
8 not accurate?

9 A. No, everything is correct.

10 Q. I'm going to go through each of the
11 defendants really quickly. Okay?

12 A. Okay.

13 Q. So I'm going to start with Defendant Berry.
14 Your claim against him is excessive force, failure to
15 intervene, deliberate indifference, battery, assault,
16 intentional infliction of emotional distress, and
17 negligence. Does that sound right to you?

18 MS. GOODWIN: Objection to form.

19 THE INTERPRETER: Yes.

20 Q. (By Ms. Jennings) We've talked about the
21 facts and what happened in February of 2014. Is there
22 anything that Defendant Berry did or did not do that's
23 relevant to the claims against him that you haven't
24 mentioned?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. I'm sorry. Can you repeat that question?

2 Q. Is there anything that Defendant Berry did
3 or did not do that's relevant to the claims against
4 him that you haven't mentioned already?

5 MS. GOODWIN: Objection to form.

6 THE INTERPRETER: I don't think so. I
7 think everything that I wrote down is fine.

8 Q. (By Ms. Jennings) Have we talked about
9 everything today that Defendant Berry did?

10 MS. GOODWIN: Same objection to form.

11 THE INTERPRETER: I'm sorry. Repeat the
12 question again. I couldn't hear it.

13 Q. (By Ms. Jennings) Let me try to rephrase
14 it.

15 For Defendant Berry, we've talked about him
16 punching and kicking you and being present in the
17 shower. Is there anything else that he did or did not
18 do regarding this complaint?

19 MS. GOODWIN: Objection to form.

20 THE INTERPRETER: No.

21 Q. (By Ms. Jennings) Before this incident, had
22 you interacted with Defendant Berry?

23 A. I don't remember.

24 Q. What about after this incident?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. No.

2 Q. For Defendant Qualls, the sergeant, what is
3 your claim against him?

4 MS. GOODWIN: Objection to form; calls for
5 a legal conclusion. It's all laid out in the
6 complaints.

7 You can answer, if you know.

8 THE INTERPRETER: Excessive force,
9 deliberate indifference, emotional distress. That's
10 the only thing I can think of.

11 Q. (By Ms. Jennings) Did Sergeant Qualls do
12 anything to you other than what we've talked about
13 today?

14 MS. GOODWIN: Objection to form.

15 THE INTERPRETER: No.

16 Q. (By Ms. Jennings) Had you interacted with
17 the sergeant before this incident?

18 A. No.

19 Q. Have you interacted with him since then?

20 A. No.

21 Q. Officer Snell, he wrote you the
22 disciplinary ticket? No, he didn't. Never mind.

23 Officer Snell was the one you said escorted
24 Diaz, correct?

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Osbaldo Jose-Nicolas 5/26/2017

1 A. I wasn't so sure if he was the one who
2 escorted Diaz, but I'm sure that he's the one that got
3 him out of the holding cell.

4 Q. Was Officer Snell present when you were in
5 the shower in the West House?

6 A. Yes.

7 Q. He was in the shower with you?

8 A. No.

9 Q. Was he there when you were removed from the
10 holding cell?

11 A. Yes.

12 Q. Was he there when you say you were punched
13 by the sergeant?

14 A. Yes.

15 Q. Was Officer Snell there for any of the
16 other hits or punches or kicks?

17 A. Can you repeat that question, please?

18 Q. Was Officer Snell there for any of the
19 other punches or kicks?

20 A. No, I don't remember.

21 Q. Did you ever ask him, Officer Snell, for
22 medical care?

23 A. No, I couldn't ask him due to the
24 conditions that I had at that time.

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1 Q. Did you have any interactions with him
2 before this, Officer Snell?

3 A. No.

4 Q. Have you interacted with him after this?

5 A. No.

6 Q. Officer Purdom, was he present when you
7 were removed from the holding cell?

8 A. Yes.

9 Q. Was he present in the shower in the
10 West House?

11 A. Yes.

12 Q. He was present the whole time you were in
13 the shower?

14 A. I'm sorry. Repeat the question again.

15 Q. Was Officer Purdom present the entire time
16 you were in the West House shower?

17 A. Yes.

18 Q. Did he come into contact with you
19 physically in any way?

20 A. No.

21 Q. Did you ask him for medical care?

22 A. No, I couldn't because of the conditions
23 that I was in.

24 Q. Did you interact with Officer Purdom before

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 **this incident?**

2 A. I spoke with Officer Purdom, but way too
3 long before that incident happened.

4 **Q. Did you have any problems with him?**

5 A. No.

6 **Q. Have you spoken to him since?**

7 A. No.

8 **Q. Aimee Lang, the issue you have with her is**
9 **that she didn't provide you with enough treatment that**
10 **day, right?**

11 MS. GOODWIN: Objection to form.

12 **Q. (By Ms. Jennings) Are you unhappy with the**
13 **treatment she provided you?**

14 MS. GOODWIN: Objection to form.

15 THE INTERPRETER: Correct.

16 **Q. (By Ms. Jennings) Was Aimee Lang present in**
17 **the West Cell House?**

18 A. Yes.

19 THE WITNESS: No, no, no. No.

20 THE INTERPRETER: No.

21 **Q. (By Ms. Jennings) Did you interact with her**
22 **after the interaction on February 5, 2014?**

23 A. Yes.

24 **Q. Did she treat you for the injuries you got**

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 **this day?**

2 A. No.

3 **Q. Do you have any problems with her?**

4 MS. GOODWIN: Objection to form.

5 THE INTERPRETER: No.

6 **Q. (By Ms. Jennings) Defendant Hughes, is your**
7 **claim against him based on his serving on the**
8 **Adjustment Committee?**

9 A. Yes.

10 **Q. What is it that you say Defendant Hughes**
11 **did or didn't do?**

12 MS. GOODWIN: Objection to form; calls for
13 a legal conclusion.

14 You can answer.

15 THE INTERPRETER: The Officer Hughes, he
16 didn't do the investigation to receive this citation,
17 the Exhibit A.

18 **Q. (By Ms. Jennings) Anything else?**

19 A. He didn't mention to me -- he didn't
20 admonish me the appellate rights to this citation.

21 **Q. Did you know you had rights to appeal?**

22 A. Yes.

23 **Q. What was your understanding of what you**
24 **have to do to appeal your ticket?**

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Osbaldo Jose-Nicolas 5/26/2017

1 A. That he had to mention what was the next
2 step to appeal to that citation.

3 Q. Did you know what the next step was?

4 A. No.

5 Q. Did you write a grievance about it?

6 A. About what?

7 Q. About the Adjustment Committee hearing?

8 A. Yes.

9 Q. And Defendant Hart, he was also on the
10 Adjustment Committee, right?

11 A. Yes.

12 Q. So is your complaint regarding him the same
13 as with Hughes?

14 MS. GOODWIN: Objection to form.

15 THE INTERPRETER: And Officer Hart, I
16 stated that he didn't have any -- an adequate
17 investigation to decide what was the best time that
18 they were going to give me for the citation in
19 Exhibit A.

20 Q. (By Ms. Jennings) So you had an issue with
21 how Hughes and Hart handled the hearing?

22 A. Yes.

23 Q. And Defendant Harrington, who was he?

24 MS. GOODWIN: Objection to form.

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1 Q. (By Ms. Jennings) Who was he at the time of
2 the -- in February of 2014?

3 A. Guardian.

4 Q. The warden?

5 A. Yes.

6 Q. Did you interact with him?

7 A. No.

8 Q. In your complaint, you allege that he
9 signed off on the disciplinary ticket?

10 A. Yes.

11 Q. Is that the basis of your complaint against
12 him?

13 A. Yes.

14 Q. Was he present at all for the events that
15 took place on February 5th?

16 A. I don't remember.

17 Q. Other than the physical injuries you've
18 already described, tell me any other injuries you had.

19 A. No, that's it. Right now, I still have the
20 problem with my jaw. When I'm eating, like, something
21 hard, it makes that clicking sound and it hurts.

22 Q. Any other physical injuries you haven't
23 already described?

24 A. No.

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1 Q. Any emotional injuries?

2 A. As of right now, no.

3 Q. In your complaint, you allege that the
4 defendants breached their duty of care to you. Do you
5 know what that means?

6 MS. GOODWIN: Objection to form; calls for
7 a legal conclusion.

8 You can answer.

9 THE INTERPRETER: No.

10 Q. (By Ms. Jennings) Did anyone ever tell you
11 why the defendants would have used excessive force
12 against you?

13 A. No.

14 Q. Have you spoken to anyone about this case
15 other than your attorney?

16 A. No.

17 Q. Have you spoken to Inmate Diaz since this
18 accident?

19 A. He told me that he was going to give me an
20 affidavit to help me out.

21 Q. Did he tell you what it would say?

22 A. No.

23 Q. Did he provide you with an affidavit?

24 A. Yes.

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Osbaldo Jose-Nicolas 5/26/2017

1 Q. When did that happen?

2 A. I don't remember.

3 Q. Was it before you filed the lawsuit?

4 A. Before. Before I did the lawsuit.

5 Q. Did you say anything else to him?

6 A. No, I just told him thank you.

7 Q. Did he say anything else to you?

8 A. No.

9 Q. How did he get the affidavit to you?

10 A. When we -- I'm not so sure. I think it was
11 when we got out of the segregation.

12 Q. When you spoke to him, was that when you
13 were in segregation?

14 A. At the exit. When we exit segregation
15 population -- to go to population.

16 Q. That's when you spoke to him?

17 A. Yes.

18 Q. Where were you at? Were you at the end of
19 the gallery?

20 A. My location? I really don't understand the
21 question.

22 Q. Your location, your physical location.

23 A. When I spoke with Diaz or when?

24 Q. Yes.

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1 A. In the holding cell, from the one here in
2 North 2.

3 Q. You were both in there at the same time?

4 A. Yes.

5 Q. You were both going back to general
6 population at the same time?

7 A. Yes.

8 Q. Have you spoken to anyone else about this
9 case?

10 A. No.

11 Q. Other than the people we've already talked
12 about, do you have any other witnesses that saw this
13 happen on February 5th?

14 A. Another person approached me and he said,
15 "What happened?" and then I asked, "What are you
16 talking about?" And he's like, "I saw what happened
17 to you," and then he told me what he was doing, and he
18 said, "Are you going to -- are you going to have a
19 lawsuit about that?" And I told him -- basically, I
20 didn't want to tell him anything because I didn't want
21 for him to know what I was planning to do, and then he
22 told me he was going to provide me an affidavit
23 because he saw everything that happened, and he did.
24 He gave me the affidavit.

Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

Osbaldo Jose-Nicolas 5/26/2017

1 Q. What's his name?

2 A. I can't remember.

3 Q. Do you know of any other witnesses?

4 A. No.

5 Q. The other inmate who provided you the
6 affidavit, do you know if he's still here at Menard?

7 A. Yes.

8 Q. He is here?

9 A. At Menard? Yes.

10 Q. What relief are you seeking?

11 MS. GOODWIN: Objection to form; calls for
12 a legal conclusion.

13 You can answer, if you know.

14 THE INTERPRETER: I ask what it says in
15 here, in Exhibit D.

16 Q. (By Ms. Jennings) You want money damages?

17 MS. GOODWIN: Objection to form.

18 THE INTERPRETER: Yes.

19 Q. (By Ms. Jennings) Do you have a specific
20 amount you are seeking?

21 MS. GOODWIN: Objection to form, and it
22 calls for a legal conclusion. I think this is a
23 question that -- if you want to talk settlement, we
24 can go ahead and do so, but any specific amount that

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1 he's seeking in the lawsuit, I don't think he needs to
2 provide today.

3 MS. JENNINGS: Well, I think if he is
4 seeking a specific amount, he does need to provide it,
5 but if he doesn't have a number, then that could be
6 his answer.

7 MS. GOODWIN: I think that that's something
8 he should talk to me about before answering.

9 MS. JENNINGS: So are you instructing him
10 not to answer?

11 MS. GOODWIN: Yeah, I'm going to instruct
12 him not to answer.

13 Q. (By Ms. Jennings) Are you seeking anything
14 other than money?

15 A. Yes.

16 Q. What would that be?

17 A. I'm asking to be transferred to another
18 prison with a minimum security and give me access to
19 classes.

20 Q. Anything else?

21 A. Punitive damages and compensatory damages.

22 Q. Other than the times where you told me you
23 didn't understand a question and I rephrased it or
24 repeated it, have you understood my questions today?

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1 A. Yes.

2 **Q. And have you answered all questions**
3 **truthfully?**

4 A. Yes.

5 **Q. I don't have anything else.**

6 MS. GOODWIN: I don't have any questions,
7 and we will waive signature.

8 (WHEREIN, the deposition was concluded at
9 12:44 p.m.)

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Osbaldo Jose-Nicolas, #R-72183 v. Nathan Berry, et al.

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1 CERTIFICATE OF REPORTER
2 I, SARAH MECKLENBURG, a Certified Shorthand
3 Reporter (IL), do hereby certify that the witness
4 whose testimony appears in the foregoing deposition
5 was duly sworn by me; that the testimony of said
6 witness was taken by me to the best of my ability and
7 thereafter reduced to typewriting under my direction;
8 that I am neither counsel for, related to, nor
9 employed by any of the parties to the action in which
10 this deposition was taken, and further, that I am not
11 a relative or employee of any attorney or counsel
12 employed by the parties thereto, nor financially or
13 otherwise interested in the outcome of the action.

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SARAH MECKLENBURG

IL CSR 084-004858